

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANDRE CAMMONS,
a/k/a Andre Cammon,

Petitioner,

Case No. 15-cv-11251
Hon. Matthew F. Leitman

v.

SHAWN BREWER,

Respondent.

/

**ORDER (1) DENYING PETITIONER’S RULE 60(b) MOTION FOR
RELIEF FROM JUDGMENT (ECF No. 44) AND (2) DECLINING TO
ISSUE A CERTIFICATE OF APPEALABILITY**

Petitioner Andre Cammons is a state prisoner in the custody of the Michigan Department of Corrections. On January 5, 2021, Cammons filed a motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b)(6). (*See* Mot., ECF No. 44.) Cammons seeks relief from the Court’s March 31, 2020, order and judgment granting Respondent’s motion for summary judgment and dismissing Cammons’ petition for a writ of habeas corpus.¹ (*See* Order, ECF No. 39.) But Jones has already challenged that ruling in the United States Court of Appeals for the Sixth Circuit, and that court rejected all of his arguments contesting the ruling. (*See* Order,

¹ The March 30, 2020, order described above was issued by the Honorable Marianne O. Battani. On January 14, 2021, this action was re-assigned from Judge Battani to the undersigned.

ECF No. 43.) Thus, because the Sixth Circuit has already concluded that the judgment he seeks relief from was properly entered, there is no basis to grant Cammons' current motion for relief from judgment. The Court therefore **DENIES** the motion and **DECLINES** to issue Cammons a certificate of appealability.

I

On April 8, 2019, Cammons filed an amended petition for the writ of habeas corpus under 28 U.S.C. § 2254. (*See* Am. Pet., ECF No. 32.) Respondent filed a motion for summary judgment and dismissal of the amended petition (*see* Mot., ECF No. 34), and on March 31, 2020, former United States District Judge Marianne O. Battani granted Respondent's motion on the basis that Cammons had failed to comply with the applicable statute of limitations. (*See* Op. and Order, ECF No. 39.) Cammons appealed the judgment of dismissal (*see* Notice of Appeal, ECF No. 41), but the Sixth Circuit agreed with Judge Battani's analysis and denied Cammons' application for a certificate of appealability. (*See* Order, ECF No. 43.)

Cammons has now filed a motion for relief from judgment pursuant to Rule 60(b)(6). (*See* Mot., ECF No. 44.) In the motion, Cammons maintains that Judge Battani erred and violated his right to due process when she failed to grant his request for an evidentiary hearing on the issues in his amended habeas petition. (*See id.*, PageID.2083, 2090.) But the Sixth Circuit has already rejected Cammons' argument that Judge Battani erred when she concluded that his petition was time barred and

that Cammons had not provided any basis to excuse his late filing. Thus, there is no basis for granting Cammons relief on his current motion. Indeed, relief from judgment under Rule 60(b)(6) “is available only in ‘extraordinary circumstances,’ *Tharpe v. Sellers*, 138 S. Ct. 545, 546 (2018) (quoting *Gonzalez v. Crosby*, 545 U.S. 524, 536 (2005)), and exceptional or extraordinary circumstances mandating relief under Rule 60(b)(6) “‘rarely occur’ in the *habeas* context.” *Miller v. Mays*, 879 F.3d 691, 698 (6th Cir. 2018) (quoting *Gonzalez*, 545 U.S. at 535). And such circumstances do not exist here. The Court therefore **DENIES** Cammons’ motion for relief from judgment.

The Court further **DENIES** Cammons a certificate of appealability because reasonable jurists could not debate whether Cammons’ motion should have been granted or whether the issues raised in his motion deserve encouragement to proceed further. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003).

II

For all of the reasons stated above, **IT IS HEREBY ORDERED** that (1) Cammons’ motion for relief from judgment (ECF No. 44) is **DENIED** and (2) the Court **DENIES** Cammons a certificate of appealability.

IT IS SO ORDERED.

Dated: June 9, 2021

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on June 9, 2021, by electronic means and/or ordinary mail.

s/Holly A. Monda

Case Manager

(810) 341-9764